

# Legislative Analysis

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## PAROLE REVOCATION

**House Bill 5967 (Substitute H-1)**  
**Sponsor: Rep. Richard Ball**

**House Bill 5969 as introduced**  
**Sponsor: Rep. David Robertson**

**House Bill 5970 (Substitute H-1)**  
**Sponsor: Rep. William Van Regenmorter**

**Committee: Judiciary**

**Complete to 6-21-06**

## **A SUMMARY OF HOUSE BILLS 5967, 5969, & 5970 AS REPORTED FROM COMMITTEE**

### House Bill 5967

Under current law, if a paroled person is required to register under provisions of the Sex Offenders Registry Act and that person willfully violates the act, parole must be rescinded. The same is true for a person paroled for certain drug offenses who violates certain provisions of the Public Health Code. Generally speaking, if a parole is rescinded, the parolee is returned to prison. However, the Corrections Code also requires that before a parole is rescinded, an interview must be conducted with the parolee by one member of the parole board. The rescission interview must be conducted within 45 days after the board receives new information.

House Bill 5967 would amend the Corrections Code (MCL 791.236 and 791.240a) to delete the current language pertaining to paroled sex and drug offenders described above and instead revoke parole and return a parolee to prison; a fact-finding hearing on the charges would be held after the person was returned to prison. In addition, at the discretion of the parole board for cause, any prisoner's parole order could be subject to rescission before release and revocation after release on parole.

The bill would require the parole board to revoke the parole of a person required to register under the Sex Offenders Registry Act who willfully violated that act. Also, the parole of a person would have to be revoked if that person had been convicted of violating or conspiring to violate certain sections of the Public Health Code involving the manufacture, delivery, or possession of 450 grams or more of Schedule 1 or 2 drugs, cocaine, or controlled substances or controlled substance analogues and, while on parole, violated or conspired to violate Article 7 of the Public Health Code and that violation or conspiracy to violate was punishable by imprisonment for four or more years, or the parolee committed a violent felony.

Current provisions requiring a fact-finding hearing on the charges to be conducted before a member of the parole board within 45 days of a parolee's return to prison would then apply.

Also, under current law, a parolee arrested for an alleged violation of parole is entitled, within 10 days after the arrest, to either 1) a preliminary hearing to determine whether there is probable cause to believe that the conditions of parole have been violated or 2) a fact-finding hearing as described above. The bill would require the director of the Michigan Department of Corrections (MDOC) or a deputy director designated by the director to be notified in writing if the preliminary parole violation hearing was not conducted within the 10-day time limit; the hearing would then have to be conducted as soon as possible. Similarly, the director or his or her designee would have to be notified if the fact-finding hearing was not conducted within the 45-day time limit, and the hearing would have to be conducted as soon as possible. A parolee could not be released pending disposition of either hearing.

Furthermore, the bill would define "violent felony" to mean that term as defined in Section 36 of the code. The bill also would make several changes that are editorial in nature.

#### House Bill 5969

The bill would amend the Corrections Code (MCL 791.206) to delete a provision that prohibited the DOC from promulgating rules under Section 6 of the code if the Michigan Supreme Court ruled that Sections 45 and 46 of the Administrative Procedures Act were unconstitutional and a statute requiring legislative review of administrative rules was not enacted within 90 days after the court ruling.

In addition, the Director of the Department of Corrections and the Corrections Commission cannot promulgate a rule or adopt a guideline that allows a prisoner to have his or her name changed. The 1996 legislation that added this prohibition also provided that the remaining provisions of the code would remain in effect if the Michigan Supreme Court ruled that the ban on prisoner name changes was "violative of constitutional provisions under the first and fourteenth amendments to the United States constitution and article I, sections 2 and 4 of the Michigan constitution of 1963." House Bill 5969 would delete this language and instead state that if the court ruled that the provision banning prisoner name changes "violates the United States Constitution or the State Constitution of 1963," the remaining provisions of the code remain in effect.

#### House Bill 5970

The bill would amend the Administrative Procedures Act (MCL 24.207) to exclude a "policy directive" from the definition of a rule. The bill would place a policy directive on the same level as a form with instructions, an interpretive pamphlet, or other material, all of which do not have the force and effect of law but are merely explanatory.

**FISCAL IMPACT:**

House Bill 5967 could increase costs for the Department of Corrections; any fiscal impact would depend on how many parolees had parole revoked and how long they were returned to prison following revocation. There are no data to indicate how many parolees might fall under the bill's parole revocation provisions. The bill's requirement that a parole violator held in custody continue to be held pending disposition of a violation hearing is a reflection of current policy, and thus would not have any fiscal implications.

House Bill 5969 would have no fiscal implications.

A fiscal analysis on House Bill 5970 is in process.

**BACKGROUND INFORMATION:**

Together, the bills address the issue of the Department of Correction's use of policy directives in lieu of adopting departmental rules through the formal rules process established by the Administrative Procedures Act and the confusion that arose from that practice that led to the release of Patrick Selepak when a parole revocation hearing was not held within 45 days. Mr. Selepak then murdered a pregnant woman, her husband, and a man who had befriended him. He has been sentenced for one of the murders (three life sentences plus an additional 200 years) and is expected to plead guilty in the murder of the married couple.

**POSITIONS:**

The Department of Corrections indicated support for House Bill 5967 and neutrality on House Bill 5970. (6-14-06)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.